

BOARD OF ADJUSTMENT MINUTES – November 20, 2003

Present: Rick Westergren, Vice-Chairman
Kathleen Maher
Katherine Bauer
Bob Levenson
Shirley Carl, Admn. Asst.

Excused: Len Harten, Chairman

Case # 29-03 Granite State Boatworks – Westchester Drive - Map 15, Lot 15-1 – Variance –
Industrial District – Para. 5.061 to allow boat sales, service and storage operation. Property owner is
14A Broad St., LLC.

Motion to approve _____

Seconded _____

Signed _____

1 Vice-Chairman Westergren opened the hearing at 7:30 PM by stating that the meetings are held in
2 accordance with the TOM Zoning Ordinances and the NH RSA's.

3
4 The applicant was notified that the Board didn't have a five-member Board and was informed that they could
5 continue on with a four-man Board by signing a waiver or they could continue the case until our next regularly
6 scheduled meeting date in December. The applicant and his representative, Mr. Patterson of Wiggin & Nourie Law
7 Firm of Manchester were allowed a few minutes to make a decision regarding this matter. They were also
8 informed that by accepting the waiver, it could not be used in the matter of requesting a rehearing if the decision
9 was in the negative. All parties understood and the waiver agreement was signed.

10
11 The notice of hearing/abutter list was read into the record: Present - Douglas Gale President of Granite State
12 Boat Works; 14A – Dean Jackson; Joseph Gruce representing Westchester Condos, Condo Board Member; David &
13 Christine Rysdam; and J. Heavisides of Meridian Land Services.

14
15 Mr. Patterson, attorney stated that Douglas Gale and Ted Butler of Granite State Boat Works were in the audience.

16
17 J. Heavisides of Meridian gave the presentation:

- 18
19 1. The property is Map 15, Lot 15-1 located at intersection of Elm St. & Westchester Dr. (former AMP Building)
20 2. In the past year, the main lot was subdivided into two lots.
21 3. The subject tonight is the front portion (15/15-2) where the existing parking lot is located. Granite State Boat
22 Works would like to move their facility to this newly created lot.
23 4. The zoning line is right along Elm St. & Westchester Dr. The portion south of Elm St. is zoned industrial; to the
24 East is commercial; and to the north is ICI.
25 5. Their business involves storage, sales & service of boats, with the majority of their business being
26 storage/service and they do have sales associated with it. We are before the Board for a commercial use (sales) in
27 the industrial zone, which isn't allowed.

28
29 J. Heavisides explained that the area has generally gone commercial in use by having the majority of the lots
30 having some type of commercial use and because of the location of this lot within the industrial zone; it is sort of
31 isolated from the main zone and will be addressed later.

32
33 He then addressed the five criteria:

34 1. Could the variance be granted without diminishing the value of abutting property?
35 Yes, the parcel is industrial and the proposed use is very similar to industrial; the warehousing of boats. As a
36 result, it wouldn't diminish the value of abutting property if a permitted use went in.

37
38 2. Would granting the variance be of benefit to the public interest?
39 Yes, Granite State Boat Works is an established business in Milford; they want to stay in Milford and near their
40 existing location.

41
42 3. Hardship - etc.

43 a. The denial would result in a hardship because the parcel is located in the northeastern most corner of the
44 industrial zone. Most of the abutting uses are commercial in nature; the one industrial use is the old AMP building.
45 The parcel to the west (brick building opposite Talarico) even though it is zoned industrial; it is an office use not
46 industrial. The other feature that separates it from the industrial is that we have Tucker Brook going through with
47 a wide wetland, which visually separates this portion of the industrial zone from the rest of the industrial – visually
48 not connected. It seems more connected with the abutting parcels, which are commercial in nature. This
49 neighborhood has gone commercial, even though the side being discussed is zoned industrial. The north side of
50 Elm St. is industrial-commercial. Most of the uses on Elm St. are commercial in nature. He feels these conditions
51 make the parcel better suited to allow commercial use than just pure industrial.

1 b. Yes, the general purpose of the industrial zone is to provide areas for manufacturing, processing, assembly,
2 wholesaling, research and development. The majority of the applicant's business is service and storage of boats,
3 processing and warehousing. Selling of boats is incidental to the main business.

4
5 c. Yes, because a majority of the proposed use is allowed in the industrial zone i.e. processing and warehousing;
6 while a small portion i.e. sales is allowed in the adjacent zones. Since it is similar in use, there won't be any injury
7 to the public or private rights if the use is allowed.

8
9 K. Bauer questioned the word "processing"? J. Heavisides explained that they get the boats ready for storage and
10 also taking out of storage, i.e. service of the boats. He referred to the ZO regarding processing and it isn't defined
11 out. It is the preparation for storage and taking out of storage.

12
13 J. Heavisides felt that the hardship is that the parcel is located in a more commercial area by nature than in an
14 industrial area.

15
16 4. Would granting the variance do substantial justice?

17 Yes, to allow the parcel to be developed that is more related to the adjacent parcels while maintaining the intent of
18 the industrial zone i.e. processing/warehousing (industrial and the sale of boats (commercial)).

19 5. Could the variance be granted without violating the spirit of the ordinance?

20 Yes, the majority of the proposed use is industrial in nature and it is only the sales use that requires a variance.

21
22 K. Maher asked if servicing of boats involves drainage of oils, gas, etc. from the motors and what provisions have
23 been made. D. Gale responded that they follow the NH Guidelines for waste oil; we comply with it in our current
24 location. Waste oil isn't a hazardous material but it is recycled. It resides in its own container i.e. a tank
25 surrounded by concrete.

26
27 B. Levenson asked if they are vacating their present site – Yes. He then asked if this facility will be lit 24/7? Mr.
28 Gale stated that the parking lot of the proposed facility is currently lit 24/7 and they plan to remain with that type
29 of lighting. Traffic – he explained that they are a low-volume company, the customer's amount to 4 or 5
30 maximum. In terms of a day, 16, and this is a peak time for their type of business. It is seasonal, two peaks i.e.
31 spring and fall. There are approximately 16 pick-ups and drop-offs/day. Noise factor is minimal - open at 9 am
32 and close 6 p.m., six days per week. They have room to store 150 boats; they focus on the small trailer boat. K.
33 Maher questioned the driveway. It was explained that they would have their own curb cut. Also, we will be about
34 60' away from the daycare entrance.

35
36 Mr. Patterson then stated that he had the opportunity to speak to Mr. Rysdam and he shared his concern
37 regarding how busy it is when parents drop-off and pick-up their children both in the am and pm. Mr. Patterson
38 continued that, if the variance is granted, there won't be an industrial facility, which has 40-50 employees
39 entering/exiting on a shift basis, you would never face the situation where there will be 40 cars at the end of the
40 first shift; coming out at the same time parents will be entering/exiting. On a normal day, 16 vehicles/day, on the
41 weekend they could get up to as many as 50/day. One of the good things about this use is that it isn't going
42 significantly have a rush of traffic that you would get from an industrial/manufacture type user. K. Maher also
43 commented that Hayward Ice Cream was allowed to have their driveway almost immediately across from
44 Westchester Dr. When you have a situation of parents gathering their children and Hayward's Ice Cream is in
45 season, it is an accident waiting to happen. Mr. Gruce stated that Hayward's had only been open one week, when
46 an accident occurred at this location. Mr. Patterson stated that he would argue that is one of the unique
47 environmental factors, which is something Supreme Court wants us to look at, which will cause the Board to say
48 this is probably a good use rather than a big industrial user. He then referred to the Simplex case. Before this
49 case, it was very difficult to gain a variance but after we went from a very restrictive situation, a person couldn't
50 get a variance unless there was absolutely nothing that could be done with the property, to rely on the common
51 sense of boards such as yours, to say what makes sense for the community and the property owner. The Simplex
52 case was almost identical to the situation before you tonight. A lot of what the applicant wants to do is an
53 industrial use. It would be good for the TOM. We are not diminishing the value of abutting property, probably

1 have a long time corporate citizen in Milford staying in Town and are good for the tax base. Granite State Boat
2 Works really wants to stay on Elm St. He has been working with them for several years and they finally found a
3 site that makes sense and will allow them to stay in Milford.

4
5 R. Westergren questioned what would happen on the right side of the property i.e. the wetlands. J.
6 Heavisides responded that it is the same parcel; there is a 50' buffer along Tucker Brook. It won't be
7 paved so there won't be any run off; it will be combination of gravel and stone and it would remain
8 porous.

9
10 K. Bauer asked that the parking for customers be pointed out on the plan. He indicated the existing
11 parking, the proposed parking will be along Westchester Drive on both sides of the proposed drive
12 and in front of the building. He thinks 20 or 27 spaces will be needed. They want to leave the
13 pavement for people that are loading/unloading boats. There are ample parking spaces. In order to
14 keep the amount of impervious area down the building is being put on part of the existing parking.

15
16 Comments from the floor:

17 Joseph Gruce, President of the condo association brought up the subject of noise. AMP Keyboard was
18 a quiet operation. D. Gale responded that they wouldn't be able to hear anything. They do run
19 motors and if they can't be heard now, they wouldn't hear anything now. The issue of anti-freeze in
20 the boats was brought up. D. Gale stated that some motors do have anti-freeze (one out of every
21 200). It isn't an issue of leakage or even a serviceable issue. Non-toxic anti-freeze is used in most
22 applications.

23
24 K. Bauer took this opportunity to discuss "hardship". Under the hardship question 3a – she read from
25 the criteria; she sees no argument that this could be used as a light or just industrial use. The only
26 reasonable use for this would be to go commercial - she isn't convinced. S. Patterson stated that
27 they don't have to convince the Board that this is a reasonable use. He continued by stating right
28 away that will raise an insurmountable burden for whomever the industrial user is when they appear
29 before the Planning Board. He thinks that any industrial use is going to have a much larger footprint,
30 more significant traffic impact, would have more significant paving and referred back to Simplex, it is
31 less attractive to an industrial user because of the wetland buffer, residential and all the commercial
32 use. An industrial user will probably feel it isn't a great place for his industrial use. K. Bauer then
33 continued by stating that industrial land has been subdivided into a lot so small that it is no longer
34 suitable for industrial land. When this subdivision went before the Planning Board they concluded
35 this was a suitable new lot. His clients felt this was a great lot for its commercial attributes.
36 Regarding this 4.4-acre lot doesn't have the potential to add to the industrial tax base. K. Bauer felt
37 that the owner boxed themselves in knowing that it was industrial and then creating a small lot that
38 possibly isn't too great for industrial use. She doesn't think it is impossible for industrial. She wants
39 the applicant to be aware of her feelings before the Board goes into closed session.

40
41 B. Levenson referred to the ZBA Handbook wherein it states that the applicant must demonstrate
42 that the restriction interferes with their reasonable use of the property and the Board needs to decide
43 whether this is a reasonable use or not. Is this the right location for this use in our Town? K. Bauer
44 commented that the restriction doesn't interfere with an industrial use; a person could have an
45 industrial use on this lot. She then speaks to "b" where it states that the specific restriction is
46 industrial – no fair and substantial relationship exists between general purpose of the ordinance and
47 the restriction on the property. She thinks a fair and substantial relationship does exist.

48
49 Mr. Patterson then stated he is very comfortable with J. Heaviside's comment. A lot of what this
50 applicant does is industrial and would qualify as that. K. Bauer rebutted that it doesn't make it an
51 industrial use. We are talking about Milford and our zoning ordinance, which may be fair/unfair –
52 backed up by State Law in the new hardship requirements.

1 The Vice-Chair closed the open portion of the meeting at 8:17 pm.

2 B. Levenson stated that the Board should have a detailed conversation regarding this request.

3
4 1. Could the variance be granted without diminishing the value of abutting property?

5 K. Maher – Yes – it is an appropriate use given the surrounding parcels.

6 B. Levenson – No problem

7 K. Bauer – No problem

8 R. Westergren – No problem

9
10 2. Would granting the variance be of benefit to the public interest?

11 K. Bauer – Doesn't think it would benefit the public interest

12 B. Levenson – Doesn't think it would be a detriment so it has to be a benefit

13 K. Maher - Yes

14 R. Westergren – Yes

15
16 3. Hardship

17 a. K. Bauer - Refer to her previous comments

18 B. Levenson felt it was a very reasonable use for this piece of property in this
19 location and in that context.

20 The zoning doesn't apply and he doesn't think it would hurt the public interest of
21 anyone else.

22 K. Maher feels it is a perfectly reasonable use for the property.

23 R. Westergren is in agreement

24 b. B. Levenson stated that it would appear to be a very reasonable use for that lot in
25 that location. It is surrounded by all types of commercial property and we could end
26 up with a manufacturing facility on that lot. K. Bauer rebutted that there are light
27 industrial business in Town that are very quiet and possibly less obtrusive than this
28 proposal.

29 K. Maher doesn't have a problem - also no problem with "c".

30 R. Westergren was in agreement.

31 c. B. Levenson – no impact

32 4. Would granting the variance do substantial impact?

33 B. Levenson referred back to the fact that it isn't an injustice, it would do substantial justice.

34 K. Bauer - No

35 K. Maher – Yes

36 R. Westergren – Yes

37
38 5. Could the variance be granted without violating the spirit of the Ordinance?

39 K. Maher – Yes

40 B. Levenson – The parcel is sitting on Elm St. and it is a perfect situation.

41 K. Bauer feels it does violate the spirit and intent of the ordinance - it is presently zoned
42 industrial, the spirit of the ordinance that this lot is intended for industrial. It says a zoning
43 restriction as applied to their property interferes with their reasonable use of the property. This
44 means it would interfere with – it implies that they couldn't have an industrial use there and that
45 isn't true. She thinks it is a good idea but it doesn't go along with the hardship. The Planning
46 Board created a sub-standard lot.

47
48 Kevin Lynch interjected that there isn't any standard lot size or frontage requirements in the
49 industrial district.

50
51 The Board then voted on the above request?

52
53 1. Could the variance be granted without diminishing the value of abutting property?

1 K. Maher – Yes B. Levenson – Yes K. Bauer – Yes
2 R. Westergren – Yes
3

4 2. Would granting the variance be of benefit to the public interest?

5 K. Maher – Yes B. Levenson – Yes K. Bauer – No
6 R. Westergren – Yes
7

8 3. Would denial of the variance result in unnecessary hardship, etc.

9 K. Maher – Yes B. Levenson – Yes K. Bauer – No
10 R. Westergren – Yes
11

12 4. Would granting the variance do substantial justice?

13 K. Maher – Yes B. Levenson – Yes K. Bauer – No
14 R. Westergren – Yes
15

16 5. Could the variance be granted without violating the spirit of the ordinance?

17 K. Maher – Yes B. Levenson – Yes K. Bauer – No
18 R. Westergren – Yes
19

20 A motion was made by K. Maher, seconded by B. Levenson and voted by majority (K. Bauer –
21 opposed).
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23 There is a 30-day appeal period.
24

25 Meeting adjourned at 8:30 pm
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